

Empire State Development

FOR CONSIDERATION

July 13, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: North Castle (Westchester County) – IBM Headquarters Relocation Project

REQUEST FOR: Adoption of Amendment to General Project Plan; Determination of No Significant Adverse Effect on the Environment; Adoption of Amendments to Sale-Leaseback Agreement and Agreement of Lease with International Machines Business Corporation (“IBM”); Authorization to Hold Public Hearing(s) Thereon; Authorization to Acquire Real Property; Authorization to Lease Real Property; and Authorization to take Related Actions.

I. Background

IBM owned an approximately 370-acre office park in Armonk, Town of North Castle, Westchester County (and owns additional contiguous parcels both within Armonk and across the adjacent Connecticut border). The two largest pieces of such property are known as Lot A to the north (approximately 133 acres) and Lot B to the south (currently approximately 211 acres). See Attachment A. IBM currently owns all of Lot A, where IBM’s former corporate headquarters is located.

II. Existing Project

Beginning in 1995, IBM constructed its 283,500 SF new Corporate Headquarters Building on Lot B. ESD facilitated this construction by, among other things, entering into: (a) a Sale-Leaseback Agreement, pursuant to which IBM conveyed to ESD, for a \$1 Purchase Price, Lot B and existing and future buildings, equipment, and personal property at Lot B (collectively, the “Premises”); and (b) an Agreement of Lease, pursuant to which: (i) ESDC simultaneously leased back to IBM all of the Premises through 2018; and (ii) IBM was granted a Purchase Option to purchase the Premises for a \$1 Purchase Price at Lease termination. This sale-leaseback (the “Existing Project”) provided IBM with certain tax benefits, including reduced real estate taxes (via an agreed “payment-in-lieu-of-taxes”, or PILOT) and sale/use tax exemptions on construction materials and equipment and personal property. As agreed by the parties, IBM pays “Rent” under the Lease solely in the form of the PILOT which is paid directly to the Town of North Castle. ESD entered into the Existing Project pursuant to the 1995 IBM Headquarters Relocation General Project Plan (“GPP”). ESD continues to own, and IBM continues to lease, the Premises at Lot B.

III. Summary of Proposed Modifications

A. Location

New Orchard Road (between NY Routes 22 and 120), Armonk, Town of North Castle, Westchester County.

B. Description

IBM proposes to convey to ESD an additional approximately 18.2 acre parcel, to be taken from Lot A and added to Lot B, inclusive of existing and future buildings, equipment, and personal property therein or thereon, all currently owned by IBM (the "Additional Property"), for inclusion in the Premises in furtherance of the GPP. The Additional Property is located at the southern perimeter of Lot A (contiguous with the northern perimeter of Lot B). See the cross-hatched portion of Attachment A. Simultaneously with the IBM conveyance to ESD, ESD would lease back the Additional Property to IBM. The IBM conveyance and the ESD leaseback would be pursuant to amendments of, but otherwise on the same terms and conditions of, the original GPP, Sale-Leaseback Agreement, and Agreement of Lease between the parties, inclusive of: (i) nominal \$1 conveyance price; (ii) any enhanced "Rent" by IBM paid as PILOT directly to Town of North Castle; (iii) 2018 Lease termination; and (iv) 2018 IBM Purchase Option for nominal \$1 value.

The Additional Property will create a greater security buffer for IBM's new Corporate Headquarters Building, and will provide other facilities incidental or appurtenant to the Existing Project. Although mostly wooded, the Additional Property also encompasses an access road and salt storage area which primarily serve existing Lot B. The inclusion of the Additional Property within Lot B will allow IBM's Headquarters operation to be self-contained within a single property, i.e., the enlarged Lot B (which would thereafter be referred to as Lot B-1). There would no longer be any access to adjoining Lot A through Lot B-1, and the source of public water will be entirely located on Lot B-1. There are no residential structures on the Additional Property. The Town of North Castle (and/or its Planning Board) has: (a) issued a Negative Declaration as Lead Agency under NYS SEQRA; (b) granted Final Subdivision Plat Approval; and (c) agreed in concept with IBM on a revised "Rent" PILOT to be paid to the Town (subject to ESD acquiring from IBM, and leasing back to IBM, the Additional Property).

C. ESD Investment: None. IBM will pay all costs associated with this transaction.

D. IBM Contact: Mr. Anthony Canonaco
Asset Management & Investments, Corporate Real Estate
New Orchard Road
Armonk, New York 10504
(914) 499-4811
canon@us.ibm.com

E. Proposed Amendment to the General Project Plan

The Proposed Amendment to the GPP is attached hereto as Attachment B. The GPP is proposed to be amended to include, as part of the Premises conveyed by IBM to ESD and

simultaneously leased by ESD back to IBM, the approximately 18.2 acre Additional Property more fully described in the legal description attached as Exhibit 1 to Attachment B. But for this Amendment, the GPP remains unchanged, and remains in full force and effect.

F. Proposed Amendments to Sale-Leaseback Agreement and Agreement of Lease

Proposed forms of Amendment to the original Sale-Leaseback Agreement and original Agreement of Lease are attached hereto as Attachments C and D, respectively. IBM would convey the Additional Property to ESD for nominal \$1 value pursuant to the Sale-Leaseback Amendment, and ESD simultaneously would lease back to IBM the Additional Property for revised "Rent" equivalent to PILOT paid to the Town of North Castle. Other terms and conditions of the Sale-Leaseback Agreement and Agreement of Lease would remain unchanged and in full force and effect.

IV. PAAA Appraisal

Prior to any disposal of the Additional Property (specifically, the leaseback to IBM), ESD will have had performed on its behalf an appraisal of the value of such Additional Property by an independent appraiser, as required by the Public Authorities Accountability Act.

V. Environmental Review

The Town of North Castle Planning Board, as Lead Agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. This review found the project to be an Unlisted Action which would not have a significant effect on the environment. The Town of North Castle Planning Board issued a Negative Declaration on October 26, 2009. ESD staff reviewed the Negative Declaration and supporting materials and concurs. It is recommended that the Directors make a Determination of No Significant Adverse Effect on the Environment.

VI. Affirmative Action

ESD's Non-Discrimination and Affirmative Action program will apply.

VII. Requested Actions

For purposes of conducting a public hearing thereon, the Directors are requested to adopt the following documents attached hereto: (1) proposed General Project Plan amendment; (2) proposed Sale-Leaseback Agreement amendment; and (3) proposed Agreement of Lease amendment. The Directors also are requested to determine that the proposed action will have no significant adverse effect on the environment. On the condition and subject to there being no substantive negative testimony or comment on these documents at such public hearing, the Directors are further requested, on the terms and conditions set forth in these materials: (i) to adopt the General Project Plan as amended and to approve the essential terms of the Sale-Leaseback and Lease amendments; and (ii) to authorize execution of the Sale-Leaseback and Lease amendments and acquisition and disposal of the Additional Property.

VIII. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

IX. Attachments

Resolutions

- A: Project Site Map
- B: Proposed GPP Amendment
- C: Proposed Sale-Leaseback Agreement Amendment
- D: Proposed Agreement of Lease Amendment

July 13, 2011

North Castle (Westchester County) – IBM Headquarters Relocation Project
Adoption of Amendment to General Project Plan; Determination of No Significant Adverse
Affect on the Environment; Adoption of Amendments to Sale-Leaseback Agreement and
Agreement of Lease with International Machines Business Corporation (“IBM”);
Authorization to Hold Public Hearing(s) Thereon; Authorization to Acquire Real Property;
Authorization to Lease Real Property; and Authorization to take Related Actions.

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), the Corporation does hereby adopt, for purposes of the public hearing required by the UDC Act and substantially on the terms and conditions described in the Materials: (1) the proposed amendment (“Plan Amendment”) to the Project’s General Project Plan (“GPP”); and (2) the essential terms of proposed amendments to the Project’s Sale-Leaseback Agreement and Agreement of Lease with International Business Machines Corporation (the “Contract Amendments”); and be it further

RESOLVED, that based on the Materials, the Corporation hereby determines that the proposed action will have no significant adverse effect on the environment; and be it further

RESOLVED, that the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to take all such actions as are necessary or appropriate to schedule and hold such public hearings as required by the UDC Act or other applicable law (which hearings may be held simultaneously), including without limitation the providing, filing, or making available of copies of the Plan Amendment and Contract Amendments, the fixing of a date for such hearing, the publication of a notice of such public hearing as required by law and in accordance with procedures heretofore approved by the Corporation with respect to similar hearings, and the making of a report or reports to the Corporation on such hearing, oral or written comments received, or local municipality recommendation received, if any; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer or authorized designee(s) that no substantive negative testimony or comment on the Plan Amendment or Contract Amendments was received at the public hearing and that the requirements of the Public Authorities Accountability Act have been complied with: (1) the GPP, as amended by the Plan Amendment, and the findings previously made with respect thereto, shall be deemed affirmed and effective as of the conclusion of such hearing; and (2) the essential terms of the Contract Amendments shall be deemed approved; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer or authorized designee(s) that no substantive negative testimony or comment on the Plan Amendment or Contract Amendments was received at the public hearing and that the requirements of the

Public Authorities Accountability Act have been complied with: (1) the Corporation finds, pursuant to the UDC Act, that the Contract Amendments are in conformity with the GPP; (2) the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed to execute on behalf of the Corporation, substantially on the terms and conditions set forth in the Materials, the First Amendment to the Sale-Leaseback Agreement and the Second Amendment to the Agreement of Lease, including all exhibits and necessary documents related thereto; (3) the Corporation finds that it is necessary and convenient for the Corporation to acquire from IBM, for ESD's immediate or future use in the furtherance of ESD's corporate purposes and the GPP, the Additional Property as defined in the Plan Amendment, which Additional Property constitutes facilities incidental or appurtenant to the Project described in the GPP; (4) the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed on behalf of the Corporation to execute and deliver such documents and to take such related actions as may be necessary or appropriate for the Corporation to acquire the Additional Property from IBM pursuant to the Materials and these Resolutions; and (5) the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed on behalf of the Corporation to execute and deliver such documents and to take such related actions as may be necessary or appropriate for the Corporation to dispose of the Additional Property to IBM via lease pursuant to the Materials and these Resolutions; and be it further

RESOLVED, that Corporation approval is expressly contingent upon: (1) approval of the Public Authorities Control Board; and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed on behalf of the Corporation to execute and deliver such documents and to take such related actions as may be necessary or appropriate to effectuate the foregoing resolutions.

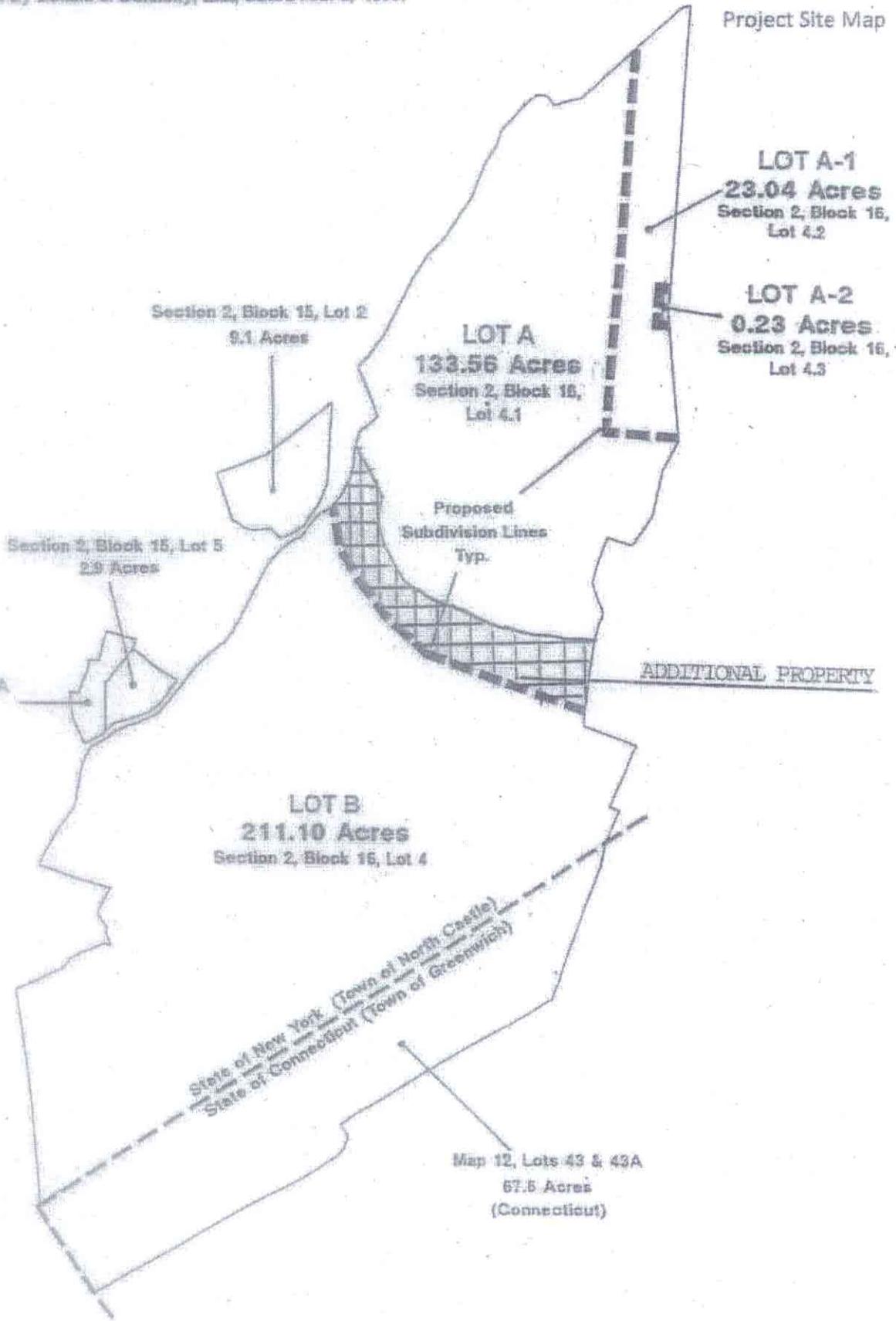
* * *

Project Site Map



EDERSEN FOX ASSOCIATES, P.C.
1075 AVENUE OF THE AMERICANS
NEW YORK, NEW YORK 10017
IN ASSOCIATION WITH

RONALD A. FREEMAN ASSOCIATES, P.C.
CONSULTING ENGINEERS
FIVE HORNBECK ROAD
HARTFORD, CT 06105



PROPOSED HEADQUARTERS OFFICE BUILDING
ARMONK, NEW YORK

0 (Feet) 1000 2000



FIGURE TITLE:
PROPOSED SUBDIVISION

FIGURE NO.
II.C1

EXHIBIT A

Attachment B

Proposed GPP Amendment

New York State Urban Development Corporation
d/b/a Empire State Development Corporation
IBM Headquarters Relocation
Land Use Improvement Project
Town of North Castle (Westchester County)
General Project Plan

Amendment July 2011

The General Project Plan for the IBM Headquarters Relocation Land Use Improvement Project, as affirmed and approved in 1995 (the "GPP"), is amended to include, as part of the Premises to be conveyed by IBM to ESD, and simultaneously leased by ESD back to IBM, the approximately 18.2 acre parcel more fully described in the metes and bounds description attached to this Amendment as Exhibit 1, together with existing and future Buildings, Equipment and Personal Property located therein or thereon (collectively, the "Additional Property"). But for this Amendment, the GPP remains unchanged, and remains in full force and effect.

EXHIBIT 1

Legal Description
Additional Property

Situate, lying and being in the Town of North Castle, County of Westchester and State of New York, being a portion of the land removed from Lot A and added to Lot B and shown on a map entitled "Subdivision of Property Prepared for International Business Machines Corporation" filed on Dec. 1, 1995 as map no. 25549 and also on a map entitled "Lot Line Adjustment And Amended Sewer Easement Prepared For International Business Machines Corporation" filed on May 15, 1997 as map no. 25925, being more particularly bounded and described as follows:

BEGINNING at a point on the Northeasterly side of Old Post Road (also known as Mile Square Road) as widened and shown filed map no. 16318, said point also being the Northerly corner of Lot B as shown on said filed maps 25549 and 25925;

Running thence from said point of beginning along said Southeasterly side of Old Post Road as widened the following courses and distances:

North 27 degrees 11 minutes 11 seconds East, 137.40 feet;

North 16 degrees 39 minutes 23 seconds East, 82.20 feet;

North 03 degrees 17 minutes 46 seconds East, 99.95 feet;

North 15 degrees 30 minutes 24 seconds East, 137.14 feet;

North 47 degrees 14 minutes 04 seconds East, 152.29 feet;

North 19 degrees 55 minutes 16 seconds West, 335.71 feet to a point on the Southeasterly side of N.Y.S. Route No. 22;

thence running along the Southeasterly side of said N.Y.S. Route No. 22 the following course and distance;

North 38 degrees 13 minutes 09 seconds East, 206.06 feet to a point on the Westerly side of Lot A-3;

thence running along the Westerly and Southwesterly side of Lot A-3 the following courses and distances;

South 19 degrees 55 minutes 09 seconds East, 473.70 feet; South 14 degrees 12 minutes 46 seconds West, 670.20 feet;

along a curve to the left having a radius of 600.00 feet and a distance of 876.32 feet;

South 69 degrees 28 minutes 10 seconds East, 1,120.99 feet to a point on the Westerly line of lands formerly of the City of New York, now being Lot 1 as shown on a map entitled

"Byram Business Center" filed in the Westchester County Clerk's Office, Division of Land Records, as map no. 21556;

thence running along the Westerly line of same, partially along the Westerly face of an irregular stone wall the following courses and distances:

South 07 degrees 33 minutes 20 seconds West, 178.73 feet;

South 06 degrees 22 minutes 00 seconds West, 53.50 feet;

South 08 degrees 07 minutes 20 seconds West, 65.05 feet;

South 04 degrees 07 minutes 20 seconds West, 41.58 feet to a point being on the Northeastly side of said Lot B;

running thence along the Northeastly side of Lot B the following courses and distances:

North 69 degrees 28 minutes 10 seconds West, 1,069.76 feet;

North 40 degrees 16 minutes 02 seconds West, 710.96 feet;

North 31 degrees 42 minutes 47 seconds West, 289.66 feet;

along a curve to the right having a radius of 200.00 feet and a length of 121.79 feet;

North 03 degrees 10 minutes 38 seconds East, 239.86 feet to the point and place of beginning.

Containing therein 18.2427 acres and known as Lot A-5.

ATTACHMENT C

Proposed Sale-Leaseback Agreement Amendment

FIRST AMENDMENT TO SALE-LEASEBACK AGREEMENT

This First Amendment to Sale-Leaseback Agreement, dated [_____, 2011], entered into between INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation having an office at New Orchard Road, Armonk, New York 10504 (the "Seller"), and NEW YORK STATE URBAN DEVELOPMENT CORPORATION, d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, a corporate governmental agency of the State of New York constituting a political subdivision and public benefit corporation, having an office at 633 Third Avenue, New York, New York 10017 ("Purchaser").

WITNESSETH:

WHEREAS, Seller and Purchaser entered into that certain SALE-LEASEBACK AGREEMENT, made as of December 5, 1995 (the "Sale-Leaseback"), pursuant to which Seller conveyed, and Purchaser accepted, certain Premises (as defined in the Sale-Leaseback), and Purchaser agreed simultaneously with such conveyance to lease such Premises back to Seller; and

WHEREAS, Seller and Purchaser agree to add additional property to the Premises, which additional property Seller agrees to convey to Purchaser, Purchaser agrees to accept from Seller, and Purchaser agrees simultaneously to lease back to Seller, all on the same terms and conditions as set forth in the Sale-Leaseback.

NOW, THEREFORE, Seller and Purchaser hereby agree as follows:

1. All capitalized terms used herein but not otherwise defined shall have the same meaning as set forth in the Sale-Leaseback.
2. Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase: (a) certain real property located in the Town more particularly described in the survey-legal description attached hereto as Exhibit 1 (the "Additional Land"); (b) the buildings and improvements currently existing and any to be constructed on the Additional Land (the "Additional Buildings"); and (c) all the Equipment and Personal Property, now or hereafter attached or used in connection with, and located in or on, the Additional Land and Additional Buildings (all such Additional Land, Additional Buildings, and related Equipment and Personal Property, collectively the "Additional Property").
3. Conveyance of the Additional Property is being made by Seller to Purchaser in consideration of One and 00/100 Dollars (\$1.00), and for other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged by both parties hereto.

4. Simultaneously with the execution and delivery of this First Amendment, Seller, at its sole cost and expense, is delivering, or causing to be delivered, to Purchaser the Seller's bargain and sale deed without covenants (the "Additional Property Deed") as set forth in Exhibit 2 attached hereto.

5. Simultaneously with the execution and delivery of this First Amendment, Seller and Purchaser are entering into a Second Amendment to the Agreement of Lease, dated as of the date hereof, pursuant to which Purchaser (as Landlord) agrees to simultaneously lease back to Seller (as Tenant) the Additional Property.

6. Except as expressly provided herein, the Sale-Leaseback remains unmodified in full force and effect and fully binding upon the parties hereto.

IN WITNESS WHEREOF, each of Seller and Purchaser have executed this First Amendment to the Sale-Leaseback as of the day and year above written.

SELLER

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By: _____
Name:
Title:

PURCHASER

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION, d/b/a EMPIRE STATE
DEVELOPMENT CORPORATION

By: _____
Peter Davidson
Executive Director

EXHIBIT 1

Situate, lying and being in the Town of North Castle, County of Westchester and State of New York, being a portion of the land removed from Lot A and added to Lot B and shown on a map entitled "Subdivision of Property Prepared for International Business Machines Corporation" filed on Dec. 1, 1995 as map no. 25549 and also on a map entitled "Lot Line Adjustment And Amended Sewer Easement Prepared For International Business Machines Corporation" filed on May 15, 1997 as map no. 25925, being more particularly bounded and described as follows:

BEGINNING at a point on the Northeasterly side of Old Post Road (also known as Mile Square Road) as widened and shown filed map no. 16318, said point also being the Northerly corner of Lot B as shown on said filed maps 25549 and 25925;

Running thence from said point of beginning along said Southeasterly side of Old Post Road as widened the following courses and distances:

North 27 degrees 11 minutes 11 seconds East, 137.40 feet;
North 16 degrees 39 minutes 23 seconds East, 82.20 feet;
North 03 degrees 17 minutes 46 seconds East, 99.95 feet;
North 15 degrees 30 minutes 24 seconds East, 137.14 feet;
North 47 degrees 14 minutes 04 seconds East, 152.29 feet;
North 19 degrees 55 minutes 16 seconds West, 335.71 feet to a point on the Southeasterly side of N.Y.S. Route No. 22;

thence running along the Southeasterly side of said N.Y.S. Route No. 22 the following course and distance:

North 38 degrees 13 minutes 09 seconds East, 206.06 feet to a point on the Westerly side of Lot A-3;

thence running along the Westerly and Southwesterly side of Lot A-3 the following courses and distances:

South 19 degrees 55 minutes 09 seconds East, 473.70 feet; South 14 degrees 12 minutes 46 seconds West, 670.20 feet;

along a curve to the left having a radius of 600.00 feet and a distance of 876.32 feet;

South 69 degrees 28 minutes 10 seconds East, 1,120.99 feet to a point on the Westerly line of lands formerly of the City of New York, now being Lot 1 as shown on a map entitled "Byram Business Center" filed in the Westchester County Clerk's Office, Division of Land Records, as map no. 21556;

thence running along the Westerly line of same, partially along the Westerly face of an irregular stone wall the following courses and distances:

South 07 degrees 33 minutes 20 seconds West, 178.73 feet;

South 06 degrees 22 minutes 00 seconds West, 53.50 feet;

South 08 degrees 07 minutes 20 seconds West, 65.05 feet;

South 04 degrees 07 minutes 20 seconds West, 41.58 feet to a point being on the Northeasterly side of said Lot B;

running thence along the Northeasterly side of Lot B the following courses and distances:

North 69 degrees 28 minutes 10 seconds West, 1,069.76 feet;

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North 31 degrees 42 minutes 47 seconds West, 289.66 feet;

along a curve to the right having a radius of 200.00 feet and a length of 121.79 feet;

North 03 degrees 10 minutes 38 seconds East, 239.86 feet to the point and place of beginning.

Containing therein 18.2427 acres and known as Lot A-5.

EXHIBIT 2

INTERNATIONAL BUSINESS MACHINES CORPORATION

TO

EMPIRE STATE DEVELOPMENT CORPORATION

BARGAIN AND SALE DEED

Dated: _____, 2011

Record and return to
Empire State Development Corporation
633 Third Avenue
New York, New York 10017

Tax Map Designation
Section 2, Block 16, Lot 4
Town of North Castle
County of Westchester

THIS INDENTURE, made the day of , two thousand eleven

BETWEEN INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York Corporation having an office at New Orchard Road, Armonk, New York 10504, party of the first part,

AND NEW YORK STATE URBAN DEVELOPMENT CORPORATION, d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, a corporate governmental agency of the State of New York constituting a political subdivision and public benefit corporation, having an office at 633 Third Avenue, New York, New York 10017, party of the second part,

WITNESSETH, that the party of the first part, in consideration of One Dollar, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of North Castle, Westchester County, New York and being more particularly described in Schedule A attached hereto and made a part hereof (the "Property"),

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the Property to the center lines thereof;

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to the Property;

TO HAVE AND TO HOLD the Property unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

RESERVING, HOWEVER, to the party of the first part and its successors and assigns forever, the following rights and powers to be exercised at its option:

A. To grant utility easements, as it sees fit in its sole discretion, serving the Property and passing through the Property to serve other properties; and

B. Subject to approval by the party of the second part or its successors or assigns, to grant easements for other than utility purposes in and through the Property for the benefit of other properties;

The powers hereby reserved are hereby agreed to be irrevocable powers coupled with an interest which may exercised by the party of the first part or any of its successors or assigns, in its own name and/or as attorney in fact for the party of the second part and its successors and assigns. The party of the second part by acceptance of this deed agrees for itself and its successors and assigns: (a) to join if so requested by the party of the first part or any of its successors or assigns, in the execution and delivery of any deed, dedication or grant of easement

that may be made pursuant to any of the above reserved powers and (b) that approval of any grant of easement pursuant to subparagraph B above will not be unreasonably withheld.

FURTHER RESERVING to the party of the first part, and its successors or assigns, all of the development rights, air rights and zoning rights (collectively, the "Development Rights") otherwise appurtenant to the Property. The Development Rights hereby reserved are hereby agreed to constitute the property solely of the party of the first part or any of its successors or assigns. The party of the second part, by acceptance of this deed, agrees for itself and its successors and assigns to join, if so requested by the party of the first part or any of its successors or assigns, in the execution and delivery of any deed, instrument, zoning lot agreement, development agreement or other such instrument ancillary thereto that may be entered into by the party of the first part respecting the conveyance, utilization or allocation of any or all of the Development Rights.

The Property conveyed hereby represents the portion of Lot B-1 not already owned by the party of the second part. Lot B-1 is shown on a certain Subdivision Map dated February 17, 2010 made by Donnelly Land Surveying, P.C., entitled "Subdivision Plat prepared for International Business Machines Corporation Situate in the Town of North Castle, Westchester County, New York" and filed _____ in the Office of the Clerk of the County of Westchester, Division of Land Records as Map No. _____

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year above written.

IN PRESENCE OF:

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By: _____

STATE OF NEW YORK
COUNTY OF WESTCHESTER: ss.:

On the _____ day of _____, in the year 2011, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in

his/her/their capacity(ies), and that by his/her/their signature(s) - on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

Notary Public

My commission expires:

ATTACHMENT D

Proposed Agreement of Lease Amendment

SECOND AMENDMENT TO AGREEMENT OF LEASE

This Second Amendment to Agreement of Lease, dated [_____, 2011], entered into between NEW YORK STATE URBAN DEVELOPMENT CORPORATION, d/b/a EMPIRE STATE DEVELOPMENT CORPORATION, a corporate governmental agency of the State of New York constituting a political subdivision and public benefit corporation, having an office at 633 Third Avenue, New York, New York 10017 (as "Landlord"), and INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation having an office at New Orchard Road, Armonk, New York 10504 (as "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain AGREEMENT OF LEASE, made as of December 5, 1995, as amended by that First Amendment to Lease dated as of May 28, 1998 (the "Lease"), pursuant to which Landlord leased to Tenant, and Tenant hired and took from Landlord, certain Premises (as defined in the Lease); and

WHEREAS, the Town of North Castle (the "Town"), pursuant to its letter addressed to Landlord dated December 5, 1995, and accepted by Landlord and Tenant by letter dated December 5, 1995, agreed to act as Landlord's agent, coupled with an interest, to perform, on Landlord's behalf, certain functions in respect of the Lease, including, among other things, collection of "Rent" (as defined in the Lease) and the determination of "any adjustment of rent under Article 2 of the Lease"; and

WHEREAS, pursuant to First Amendment to Sale-Leaseback Agreement of even date herewith: (a) Tenant conveyed to Landlord additional land and related property (as more specifically defined below) by deed of even date herewith; and (b) Landlord agreed simultaneously to lease back to Tenant such additional property on the same terms and conditions as set forth in the Lease.

NOW, THEREFORE, Landlord and Tenant hereby agree as follows:

1. All capitalized terms used herein but not otherwise defined shall have the same meaning as set forth in the Lease.
2. Landlord does hereby lease to Tenant, and Tenant does hereby hire and take from Landlord the following additional property: (a) certain real property located in the Town more particularly described in the survey/legal description attached hereto as Exhibit 1 (the "Additional Land"); (b) the buildings and improvements currently existing and any to be

constructed on the Additional Land (the "Additional Buildings"); and (c) all the Equipment and Personal Property, now or hereafter attached or used in connection with, and located in or on, the Additional Land and Additional Buildings (all such Additional Land, Additional Buildings, and related Equipment and Personal Property, collectively the "Additional Property").

3. "New Exhibit 'A-1' Rent Payments", currently attached to the Lease, is of no further force, effect or application, and is hereby deleted in its entirety. The "New Exhibit 'A-1' Rent Schedule No. 3" attached hereto as Exhibit 2, shall be substituted therefore ("Rent Schedule No. 3"). The Rent set forth on Rent Schedule No. 3 shall constitute Rent due under the Lease (but remaining subject to certain adjustment as may be permitted under Lease Section 2.06).

4. Except as expressly provided herein, the Lease remains unmodified in full force and effect and fully binding upon the parties hereto.

IN WITNESS WHEREOF, each of Landlord and Tenant have executed this Second Amendment to the Agreement of Lease as of the day and year above written.

LANDLORD
NEW YORK STATE URBAN DEVELOPMENT
CORPORATION, d/b/a EMPIRE STATE
DEVELOPMENT CORPORATION

TENANT
INTERNATIONAL BUSINESS
MACHINES CORPORATION

By: _____
Peter Davidson
Executive Director

By: _____
Name:
Title:

ACCEPTED AND AGREED
TOWN OF NORTH CASTLE

By: _____
Name:
Title:

EXHIBIT 1

Situate, lying and being in the Town of North Castle, County of Westchester and State of New York, being a portion of the land removed from Lot A and added to Lot B and shown on a map entitled "Subdivision of Property Prepared for International Business Machines Corporation" filed on Dec. 1, 1995 as map no. 25549 and also on a map entitled "Lot Line Adjustment And Amended Sewer Easement Prepared For International Business Machines Corporation" filed on May 15, 1997 as map no. 25925, being more particularly bounded and described as follows:

BEGINNING at a point on the Northeasterly side of Old Post Road (also known as Mile Square Road) as widened and shown filed map no. 16318, said point also being the Northerly corner of Lot B as shown on said filed maps 25549 and 25925;

Running thence from said point of beginning along said Southeasterly side of Old Post Road as widened the following courses and distances:

North 27 degrees 11 minutes 11 seconds East, 137.40 feet;

North 16 degrees 39 minutes 23 seconds East, 82.20 feet;

North 03 degrees 17 minutes 46 seconds East, 99.95 feet;

North 15 degrees 30 minutes 24 seconds East, 137.14 feet;

North 47 degrees 14 minutes 04 seconds East, 152.29 feet;

North 19 degrees 55 minutes 16 seconds West, 335.71 feet to a point on the Southeasterly side of N.Y.S. Route No. 22;

thence running along the Southeasterly side of said N.Y.S. Route No. 22 the following course and distance:

North 38 degrees 13 minutes 09 seconds East, 206.06 feet to a point on the Westerly side of Lot A-3;

thence running along the Westerly and Southwesterly side of Lot A-3 the following courses and distances:

South 19 degrees 55 minutes 09 seconds East, 473.70 feet; South 14 degrees 12 minutes 46 seconds West, 670.20 feet;

along a curve to the left having a radius of 600.00 feet and a distance of 876.32 feet;

South 69 degrees 28 minutes 10 seconds East, 1,120.99 feet to a point on the Westerly line of lands formerly of the City of New York, now being Lot 1 as shown on a map entitled "Byram Business Center" filed in the Westchester County Clerk's Office, Division of Land Records, as map no. 21556;

thence running along the Westerly line of same, partially along the Westerly face of an irregular stone wall the following courses and distances:

South 07 degrees 33 minutes 20 seconds West, 178.73 feet;

South 06 degrees 22 minutes 00 seconds West, 53.50 feet;

South 08 degrees 07 minutes 20 seconds West, 65.05 feet;

South 04 degrees 07 minutes 20 seconds West, 41.58 feet to a point being on the Northeasterly side of said Lot B;

running thence along the Northeasterly side of Lot B the following courses and distances:

North 69 degrees 28 minutes 10 seconds West, 1,069.76 feet;

North 40 degrees 16 minutes 02 seconds West, 710.96 feet;

North 31 degrees 42 minutes 47 seconds West, 289.66 feet;

along a curve to the right having a radius of 200.00 feet and a length of 121.79 feet;

North 03 degrees 10 minutes 38 seconds East, 239.86 feet to the point and place of beginning.

Containing therein 18.2427 acres and known as Lot A-5.

EXHIBIT 2

[New Exhibit 'A-1' Rent Schedule No. 3 to be added]

FOR CONSIDERATION
October 19, 1995

TO: The Directors
FROM: Charles A. Gargano
SUBJECT: North Castle (Westchester County) - IBM Headquarters
Relocation Project (the "Project")

REQUESTED

ACTIONS: Land Use Improvement Project Findings; Adoption of Findings Pursuant to the New York State Environmental Quality Review Act; Adoption of the General Project Plan; Authorization to Acquire Real Property; Authorization to Lease Real Property; and Authorization to take Related Actions.

General Project Plan

Location: Armonk, Town of North Castle (Westchester County)

Site: King Street (NY Route 120)

Project

Description: IBM proposes to build a new headquarters office building on the southern portion of their existing property. The headquarters building is planned to be located immediately east of the existing IBM Management Development Center ("MDC"). The facility would be a three-story office structure totaling approximately 283,500 square feet.

Employment: 600 Employees and approximately 300 temporary construction jobs.

UDC

Investment: None

Project Background

The proposed Headquarters Office Building ("HOB") is intended to replace the existing 31 year old 420,000 square foot facility. IBM intends to market the old facility and a portion of the surrounding land (Lot A). Specifically, development of the HOB requires the subdivision of the 367.93 - acre parcel into three (3) lots. Lot A is 133.56 acres. Lot A-1 would contain a 23.27 - acre recreation facility which is to be donated to the Town. The new building and the existing MDC would be on Lot B.

Other proposed improvements to Lot B consist of new roads, parking and support facilities, a helistop, a stormwater management system, sanitary waste collection facilities and connection of the proposed MDB to the sewer system and improvements of State roadways.

The purpose of this project is to facilitate the construction of a state of the art headquarters building for IBM capable of providing its senior management and their staffs with facilities and technological infrastructure necessary to be an industry leader in the global marketplace well into the next century. A new facility is necessary because the existing facility is larger than required, in need of major renovation and not located in near enough proximity to the MDC. The most significant benefit of the new HOB will be improved productivity of IBM's headquarters employees and reduced operating costs based on new efficient operating systems and the reduced size of the building and site.

The proposed recreation center and existing well supply donations to the Town will fulfill two areas of public need; recreation and water supply.

The Project

IBM has asked UDC to acquire title to Lot B and to dispose of it via a lease with IBM in order for UDC to provide a sales tax exemption for construction materials and ongoing purchases of machinery and equipment and other items to IBM. The value of the sales tax benefit is estimated to be \$4,950,000 during the first two years and \$250,000 during the balance of the Lease term. The term of the lease is through 2017. The rental will equal the PILOT payments to be made to the Town. UDC will enter into an Agreement with the Town authorizing the Town to be UDC's agent and collect the rental payments directly. The Town will be responsible for remitting the respective shares to the County and School District. The schedule for the rent is attached hereto as Exhibit A.

The lease provides that all costs with respect to the leased premises shall be borne by IBM. In addition, if any Event of Default (as defined in the Lease) shall have occurred and be continuing, UDC may record a deed returning the leased premises to IBM and IBM shall pay to UDC all rent payable through the date the deed was delivered as well as certain costs for damages.

IBM shall have the right to terminate the Lease, provided there is no default, at anytime after completion of the HOB and UDC shall deliver the deed to IBM.

In return for UDC's participation in the Project, IBM has represented, which representations survive the delivery of the

deed to UDC, that IBM has no present intention to relocate the HOB or the MDC outside of New York. In addition, if IBM relocates the HOB or the MDC, it shall be an Event of Default under the Lease.

Statutory Basis

The proposed project is consistent with the requirements of the UDC Act for land use improvement projects and satisfies the findings required under Section 10(c) and (g) of the UDC Act as described below.

1. The area in which the Project is located is substandard or unsanitary or is in danger of becoming a substandard and insanitary area and tends to impair the sound growth of the municipality. Specifically, Westchester County has suffered a serious decline in employment. In the period between 1989 and 1994 there has been a loss of 34,500 jobs or a loss of 8.4% of the workforce, while New York state-wide suffered a loss of only 5.4%.

2. The Project provides for a plan or undertaking for the comprehensive redevelopment of the project area; i.e. the proposed Project consists of a plan to (i) provide IBM with a state of the art facility; (ii) provide the Town with a recreation center and (iii) market the old building and the surrounding land on Lot A-1.

3. The Project affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the community as a whole. The Project will be implemented and privately financed by IBM.

4. No residential relocation is required because there are no families or individuals residing on the Project site.

AFFIRMATIVE ACTION

UDC's Non-Discrimination and Affirmative Action policy will apply.

ENVIRONMENTAL REVIEW

The Town of North Castle, the lead agency for the proposed action, has concluded its environmental review process pursuant to the State Environmental Quality Review Act ("SEQRA"). A final environmental impact statement ("FEIS") and statement of findings have been issued by the lead agency and UDC has been an involved agency in the process. UDC concurs with the determination that no significant impacts on the environment will result from the Project provided the mitigation proposed is implemented. UDC staff therefore recommend that the Directors adopt the SEQRA

findings.

The necessary findings are set out below. The Statement of Findings with respect to the IBM Headquarters Relocation Project, attached hereto as Exhibit B, contains the facts and conclusions in the Draft and Final EIS relied upon to support the Corporation's decision on the action analyzed in the SEQRA process, namely the adoption of the proposed General Project Plan, and indicates the social, economic and other factors and standards forming the basis of its decision.

The findings that the Corporation must adopt prior to the Corporation adopting the General Project Plan, are that:

- The Corporation has given consideration to the Draft and Final EIS;
- The requirements of the SEQRA process, including the applicable regulations of the New York State Department of Environmental Conservation have been met;
- Consistent with social, economic and other essential considerations from among the reasonable alternatives thereto, the action to be carried out, funded or approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the relevant environmental impact statement;
- Consistent with social, economic and other essential considerations to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

These findings are supported by the Findings Statement (Exhibit B annexed hereto).

ATTACHMENTS

October 19, 1995

NORTH CASTLE/WESTCHESTER COUNTY - IBM Headquarters
Relocation Project - Land Use Improvement Project Findings
Pursuant to Section 10 of the UDC Act

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the IBM Headquarters Relocation Project (the "Project"), the Corporation hereby finds pursuant to Section 10 of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"):

- (1) that the area in which the Project is to be located is a substandard or unsanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality;
- (2) that the Project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for the recreational and other facilities incidental or appurtenant thereto; and
- (3) that the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole;

and be it further

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation relating to the Project, indicating that there are no families or individuals to be displaced from the Project area, the Corporation hereby finds that the requirements of Section 10(g) of the Act are satisfied.

* * *

October 19, 1995

NORTH CASTLE (WESTCHESTER COUNTY) - IBM Headquarters
Relocation Project - Adoption of Findings Pursuant to the
State Environmental Quality Review Act

RESOLVED, that with respect to the IBM Headquarters Relocation Project (the "Project"), the Corporation hereby makes and adopts pursuant to the State Environmental Quality Review Act ("SEQRA"), the following findings and determinations, which findings and determinations are made after full consideration of the "Statement of Findings" with respect to the "IBM Headquarters Relocation Project" attached as Exhibit B hereto, which Exhibit B is hereby adopted by the Corporation and copies of which document are hereby ordered filed with the records of the Corporation.

1. The Corporation has given consideration to the Draft and Final Environmental Impact Statement prepared for the Project.
2. The requirements of the SEQRA process, including the applicable regulations of the New York State Department of Environmental Conservation have been met;
3. Consistent with social, economic and other essential considerations from among the reasonable alternatives thereto, the action to be carried out, funded or approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the relevant environmental impact statement;
4. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporation as conditions to the decision those mitigative measures which were identified as practicable; and be it further

RESOLVED, that the President and Chief Executive Officer or any Senior Vice President or Vice President of the Corporation be, and each of them hereby is, authorized to take such action as he or she deems necessary or appropriate to comply with the requirements of SEQRA in connection with the Project.

* * *

October 19, 1995

NORTH CASTLE/WESTCHESTER COUNTY - IBM Headquarters Project -
Adoption of the General Project Plan; Authorization to Hold
Public Hearings Pursuant to Applicable Laws; and Authorization to
Take Related Actions

RESOLVED, that the Corporation does hereby adopt, for the purposes of the public hearing required by Section 16(2) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), with respect to the IBM Headquarters Relocation Project (the "Project"), the proposed General Project Plan (the "Plan") for the Project submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) in his discretion may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation relating to this Project, and be it further

RESOLVED, that the President and Chief Executive Officer or his designee(s) be, and any of the same is, hereby authorized to take such action(s) as he or she deems necessary and appropriate in connection with the holding of the public hearings required by Section 6 and Section 16(2) of the Act (which hearings may be held simultaneously) including, without limitation, the providing, filing or making available of copies of the Plan or a digest relating to the Project, the fixing of a date for such hearings, in accordance with the procedures heretofore approved by the Corporation with respect to similar hearings, and the making of a report or reports to the Directors on such hearings, written comments received, and any local governmental recommendation respecting the Plan.

* * *

October 19, 1995

NORTH CASTLE/WESTCHESTER COUNTY - IBM Headquarters Relocation
Project - Authorization to Acquire Real Property and to Dispose
of Such Real Property

RESOLVED, that in accordance with the materials presented to this meeting and ordered filed with the records of the Corporation, the Corporation hereby finds, pursuant to Section 5 of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), that it is necessary and convenient for the Corporation to acquire from IBM, for its immediate or future use in the furtherance of its corporate purposes, all or part of the lands generally described as specified in the attached Schedule A; and be it further

RESOLVED, that the President and Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized to make all agreements, execute all other instruments or take any other action as the President and Chief Executive Officer may deem necessary or appropriate in order that the Corporation may acquire such real property pursuant to this resolution; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to dispose of all or part of such real property to IBM, for the purposes of the IBM Headquarters Relocation Project, on such terms and conditions as may be deemed reasonable and satisfactory by the President and Chief Executive Officer or his designee(s); and be it further

RESOLVED, that the President and Chief Executive officer or his designee(s) be, and each of them hereby is authorized in the name and on behalf of the Corporation to execute and deliver and affix the seal of the Corporation to all such agreements, deeds, certificates and instruments; and to take all such action as he may, in his sole discretion, consider to be necessary or proper to effectuate the disposition of such property.

* * *

RENT PAYMENTS

YEAR	TOTAL RENT PAYMENT	19.94% TOWN APRIL		22.15% COUNTY APRIL		YEAR	57.91% SCHOOL	SCHOOL INSTALLMENTS	
								SEPT.	JAN.
1998	2,597,000	517,842	575,236	1998-99	1,503,922	751,961	751,961		
1999	2,597,000	517,842	575,236	1999-00	1,503,922	751,961	751,961		
2000	2,597,000	517,842	575,236	2000-01	1,503,922	751,961	751,961		
2001	2,597,000	517,842	575,236	2001-02	1,503,922	751,961	751,961		
2002	2,597,000	517,842	575,236	2002-03	1,503,922	751,961	751,961		
2003	2,597,000	517,842	575,236	2003-04	1,503,922	751,961	751,961		
2004	2,597,000	517,842	575,236	2004-05	1,503,922	751,961	751,961		
2005	2,597,000	517,842	575,236	2005-06	1,503,922	751,961	751,961		
2006	2,597,000	517,842	575,236	2006-07	1,503,922	751,961	751,961		
2007	2,597,000	517,842	575,236	2007-08	1,503,922	751,961	751,961		
2008	2,674,910	533,377	592,493	2008-09	1,549,040	774,520	774,520		
2009	2,755,157	549,378	610,267	2009-10	1,595,512	797,756	797,756		
2010	2,837,810	565,860	628,575	2010-11	1,643,375	821,687	821,687		
2011	2,922,947	582,836	647,433	2011-12	1,692,678	846,339	846,339		
2012	3,010,636	600,321	666,856	2012-13	1,743,459	871,730	871,729		
2013	3,100,953	618,330	686,861	2013-14	1,795,762	897,881	897,881		
2014	3,193,982	636,880	707,467	2014-15	1,849,635	924,817	924,818		
2015	3,289,801	655,986	728,691	2015-16	1,905,124	952,562	952,562		
2016	3,388,496	675,666	750,552	2016-17	1,962,278	981,139	981,139		
2017	3,490,151	695,931	773,064	2017-18	2,021,146	1,010,573	1,010,573		
TOTAL	56,634,843	11,292,985	12,544,619		32,797,239	16,398,624	16,398,615		

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FINDINGS STATEMENT
STATE ENVIRONMENTAL QUALITY REVIEW ACT
IBM HEADQUARTERS RELOCATION PROJECT

I. BACKGROUND AND INTRODUCTION

Pursuant to Article 8 (State Environmental Quality Review Act, "SEQRA") of the Environmental Conservation Law and its implementing regulations in 6 NYCRR Part 617, the New York State Urban Development Corporation d/b/a the Empire State Development Corporation ("ESDC"), as an involved agency for the IBM Headquarters Relocation Project (the "Project"), makes the following Findings based on the Final Environmental Impact Statement ("FEIS") dated July 1995 prepared by the lead agency, the Town of North Castle, Planning Board. ESDC's Findings are now being issued following the lead agency's issuance of their Findings on August 24, 1995.

The Project consists of the subdivision of the existing IBM 367.9-acre parcel of land containing the IBM Headquarters Building and Management Development Center (MDC) into three lots, the development of a new headquarters office building on one of the proposed lots, and the re-use of the existing IBM headquarters building. The site is located in the Town of North Castle, Westchester County, New York and fronts on King Street (NY State Route 120), Old Post Road, and Route 22.

Lot A, a 133.56-acre parcel, is proposed to be sold and contains the existing IBM Headquarters Building and an existing helistop. Lot A-1, a 23.27-acre parcel which contains an existing recreational facility is proposed to be dedicated to the Town of North Castle. Lot B, a 211.1-acre parcel, is proposed to contain the existing Management Development Center and a new 283,500 square foot building. This new building is designed to accommodate approximately 600 employees. Other proposed improvements to Lot B consist of new roads, parking and support facilities, a new helistop, stormwater management and sanitary waste collection facilities and connection to and expansion of an existing municipal water supply.

The proposed action also includes:

- a proposed zoning amendment to allow the transfer of OB District development rights within the OB and DOB zoning districts;
- a petition to transfer development rights from Lot A-1 to Lot A;
- a special exception use permit for the proposed new helistop;
- a zoning amendment to permit extended helistop hours of operations;

- Town Board approval to allow the extension of Water District 4 to include the IBM site and
- applications for Town wetlands permits.

Other governmental reviews, approvals and permits related to the helistops, sewer system connections, connections to and improvements of roadways, stormwater management, erosion and sediment control, and stormwater pollution prevention are required for the development of the Project.

II. FINDINGS

1. Geology

To reduce impacts to the site's geology, the applicant has designed the project to minimize the amount of rock removal. Rock excavated for building and road construction will be used, as necessary, for fill in areas on the site. A Blasting Plan conforming to both State and local requirements will be submitted for Town acceptance and then implemented.

Based on the layout of the proposed project, the need for blasting has been minimized to the maximum extent possible, the proposed blasting is necessary to reasonably develop the site according to the needs of the applicant, all blasting operations will be properly planned for, monitored and conducted, and proposed blasting will have no significant environmental impacts.

2. Soils

Most of the material to be excavated from the site will be used on-site as fill material for construction purposes. An estimated 10,000 to 15,000 cubic yards (of a total 115,000 cubic yards required) may be required from off-site sources. Excavation on the site may result in the disturbance of approximately seven acres of slope areas between 15% and 25% and approximately six acres of disturbance of slope areas greater than 25%. The Conceptual Sedimentation and Erosion Control Plan in the EIS should serve to limit erosion and sedimentation if the detailed plans that are developed from them include a phasing plan, directions for monitoring and guidelines for continual updating. Therefore, there should be a qualified independent environmental monitor available for on-site observation of the implementation and maintenance of all erosion and sedimentation controls.

3. Groundwater Resources and Water Supply

The applicant proposes to extend Water District 4 to the IBM parcel to provide the required water to the new facility. In turn, IBM proposes to donate its two existing wells on Parcel A-1 to the Town of North Castle, thus increasing the capacity of the Town's water supply system. Also, before stormwater is recharged, it will be pre-treated as it percolates through the soil prior to reaching groundwater supplies.

4. Surface Water

The proposed methods of stormwater runoff management, if properly implemented and modified to the satisfaction of the Town's consulting engineer, should minimize the potential for any

adverse environmental impacts related to stormwater quantity. The proposed Sedimentation and Erosion Control Plan, and the Stormwater Management Plan are modified to the satisfaction of the New York City Department of Environmental Protection, no adverse water quality impacts should result.

5. Wetlands

Eighteen wetland areas have been identified on the site totaling approximately 21 acres. Development of the proposed action will result in the direct loss of .38-acres of wetlands and will impact several wetland adjacent areas. To compensate for this loss of wetland area, the applicant proposes to create a .5-acre wetland area which will pretreat stormwater runoff from the parking areas, roads, and building prior to entering Wetland D. The proposed wetland creation and other mitigation should adequately mitigate the loss of wetland areas due to the Project.

6. Vegetation and Wildlife

Of the 211 acres in Parcel B, approximately 26 acres will be cleared as a result of the proposed action. This includes approximately 22.7-acres of wooded areas, 2.9-acres of open fields and .38-acres of wetlands. Some vegetation may also be impacted by introducing road salt for winter-time deicing operations on site roadways. The applicant proposes to mitigate this loss by constructing a .5-acre new wetland area as a stormwater pretreatment basin. The new wetland will be planted with a variety of wetland vegetation. However, the loss of vegetation is unavoidable and has been minimized to the maximum extent possible.

7. Transportation

Based on detailed analysis conducted by the traffic consultant, site traffic was distributed to area roads and included future combined traffic volumes. These traffic volumes were compared to background traffic volumes, without site-generated traffic, to determine impact. Based on the findings of this analysis, a mitigation plan was developed.

The following is a summary of the improvement plans to be implemented by the applicant:

- Site access will be to King Street and to Old Post Road, the latter via an existing IBM Access Drive.
- A traffic signal will be installed at the intersection of Route 22/Old Route 22/Old Post Road. The traffic signal will be a three-phase operation and will require approval by the New York State Department of Transportation.
- A new intersection to King Street will be constructed opposite the location of the proposed Kingswood Access Drive. The intersection will include a southbound left turn lane, a northbound acceleration lane and a northbound deceleration lane into the site. The Access Drive will have two approach lanes and the intersection will be controlled by a traffic signal. These improvements will require the approval of the New York State Department of Transportation.
- A segment of Old Post Road, between Route 22 and the existing IBM Access Drive will

be repaved and the intersection of Old Post Road and the existing IBM Access Drive will be reconfigured to redirect Old Post Road traffic to a T-type intersection, thereby giving IBM site traffic the right-of-way. This type of configuration will discourage through traffic from using Old Post Road between King Street and Route 22.

- The existing IBM Access Drive will be widened to 30 feet to accommodate two 12-foot lanes and a 6-foot painted center median.
- The applicant has proposed to participate, on a fair share basis, towards the construction of other off-site improvements that have been identified as part of the traffic impact study prepared for this project.

The New York State Department of Transportation has initiated a project to reconstruct route 120 (King Street) from north of the Airport Access Road to the northerly intersection of Route 22. In addition, this NYSDOT project would include improvements at Interchange 2 and 3 with I-684. This NYSDOT project has been identified as PIN 8130.75.

Based on a meeting held with NYSDOT and Town officials, the NYSDOT has committed to immediately fund the design and environmental review process for the reconstruction of Route 120 and the two interchanges. The NYSDOT has also now committed to accelerate the schedule for design and construction so that needed improvements will be in place as soon as possible.

The conceptual improvement plan for King Street is to reconstruct the roadway, in generally the same alignment, and to provide two travel lanes in each direction and a center lane for left turning movements at major intersections. At Interchange 2, there are several alternatives to reconfigure the ramps and improve traffic operation. At Interchange 3, an additional loop ramp will probably be incorporated into the existing interchange, as well as possible signalization.

The improvements planned by IBM and other approved developments, and in conjunction with the NYSDOT/Town agreement to upgrade Route 120 and the I-684 interchanges, will adequately mitigate added traffic from IBM and other approved developments.

As an interim step for mitigation to account for IBM site-generated traffic, traffic signals should be installed at the two ramp intersections with the Airport Access Road and coordinated with the existing traffic signal located at Route 120, and that two traffic signals should be installed to accommodate the left turn movements on Rout 22 at Interchange 3. It will be the responsibility of the NYSDOT to determine the need for the signals and the responsibility for their installation. Every effort should be made to assure that these improvements are in place before the proposed IBM building is fully occupied.

8. Helistop

The applicant proposes to develop a new helistop on Lot B. This action requires a special use permit from the Town Board and approvals from the New York State Department of Transportation and the Federal Aviation Administration. The location of the helistop conforms with the Town's requirements for a special use permit.

The applicant is also requesting permission to operate the helistop during non-daylight hours in addition to normally permitted daylight hours until 9:00 PM. A maximum of 40 of the 80 flights monthly are expected to occur during this later time period.

The proposed helicopter flight paths are the same paths as used to serve the existing IBM helistop. They are located away from off-site residences.

The location selected for the helistop minimizes disturbances to vegetation on the site and conforms to applicable zoning regulations. Helicopter flight patterns also conform to those required by existing zoning. Therefore, the proposed use and location of the helistop, including the extended hours of operation, should not have any significant adverse impacts.

9. Noise

Because the proposed helicopter routes are designed not to pass over residential areas within one-half mile of the helistop, no significant noise impacts to adjacent residences are expected as a result of the operation of the new helistop. The established helicopter routes have been designed to maintain noise levels below the threshold of intrusiveness and to comply with the Town of North Castle Zoning Code.

An analysis of potential noise generation by future traffic indicates that the additional traffic will increase noise levels by approximately .5 dBA along Route 120. Projected noise levels caused by other sources will increase ambient noise levels near Old Post Road from 52.1 dBA to 57.6 dBA. Although the projected 5.5 increase along Old Post Road may be noticeable, it is not considered significant.

10. Air Quality

Only minor increases in Carbon Monoxide (CO) are expected as a result of the proposed action. The primary cause of increased CO levels would be the increase in exhaust from the additional automobiles generated and the increase in roadway congestion that could result. No significant increases in congestion are predicted as a result of the Project and therefore no significant increases in CO levels are expected.

11. Land Use and Zoning

The Project may encourage some additional retail and service uses near the IBM site. This development should not be significant or place excessive burdens on the Town, because the proposed action includes on-site personal services, such as cafeterias, physical fitness centers, banking facilities and cleaning pick-up for the building occupants. The proposed transfer of development rights would only apply to sites in the existing OB and DOB Districts and, as such, would have no applicability to the rest of the Town. The increased development that would result on Lot A would not differ significantly from that which would result if the development rights were to remain on the adjacent Lot A-1.

The proposed action should not have a significant impact on surrounding land uses. The proposed conceptual road location for an access drive connecting Business Park Drive with Lot A-1 will have no significant adverse environmental impacts. However, until the new road is developed, the Planning Board finds that an access easement from Route 22 across Lot A to Lot

A-1 should be provided to the Town.

12. Community Services

The increase in Police and Fire Department call volume is not significant and should be mitigated effectively by the additional tax revenues generated by the Project. The proposed development of an emergency access road to the south side of the proposed action. The proposed development of an emergency access road to the south side of the proposed building will allow emergency access to several positions along the buildings's facade for firefighting purposes. The proposed action will not have a significant adverse impact on Community Services.

13. Sewage

The expansion of the Town's Sewage Treatment system to serve the proposed headquarters building should not have a significant environmental impact provided that:

- An as-built survey of the entire system and a video survey of the existing pipe's interior be performed and supplied to the Town's Consulting Engineer complete with a certification of the pipe's integrity by the design engineer;
- A minimum of a one year guarantee of the system's integrity be provided to the Town; and
- A dedicated easement be granted to the Town.

14. Historic and Cultural Resources

The presence of archaeological resources on the site warrants additional investigation in the form of a Stage II study, and further mitigation if necessary and recommended by the Stage II study. The applicant should avoid this area during the construction process and should protect it with suitable fencing or barriers such as "Jersey Barriers". If the Stage II recommends any mitigation, it should be coordinated with the New York State Office of Parks, Recreation, and Historic Preservation.

15. Socioeconomic Conditions

IBM proposes to convey Lot B to ESDC. This action would render Lot B exempt from real estate taxes, but not from special district taxes. IBM intends to lease back Lot B until 2017 at an annual rent of \$2,597,000 between 1998 and 2007. After 2007, rent payments would increase at an annual rate of 3%. The rent, at the direction of ESDC, would be payable to the Town of North Castle which in turn would allocate it to itself, Westchester County, and the Byram Hills School District. Special district taxes would continue to be paid in accordance with the Town of North Castle Code.

IBM also proposes to guarantee that real estate taxes on Lot A will be a minimum of \$750,000 annually between 1998 and 2007. The \$750,000 guarantee includes real estate taxes and all special district taxes, except for sewer taxes.

After development, the total parcel is expected to generate approximately \$3.9 million annually

in rent and real estate tax revenues. The equivalent revenue in 1995 dollars is approximately \$3.6 million.

School taxes on the IBM property for the 1995/96 year amount to \$1,954,447 or approximately 9% of the School's budget which is raised through property taxes. In 1998 rent payments to the School District on Lot B are estimated at \$1,504,000 and school tax payments on Lot A are estimated at \$570,000 for a total of approximately \$2,074,000.

IBM currently pays approximately \$49,913 in fire district taxes annually. In 1998 the Fire District taxes on Lots A and B are expected to increase to \$58,300 annually or 14.4% of the Fire District's budget, a 17% increase over existing conditions.

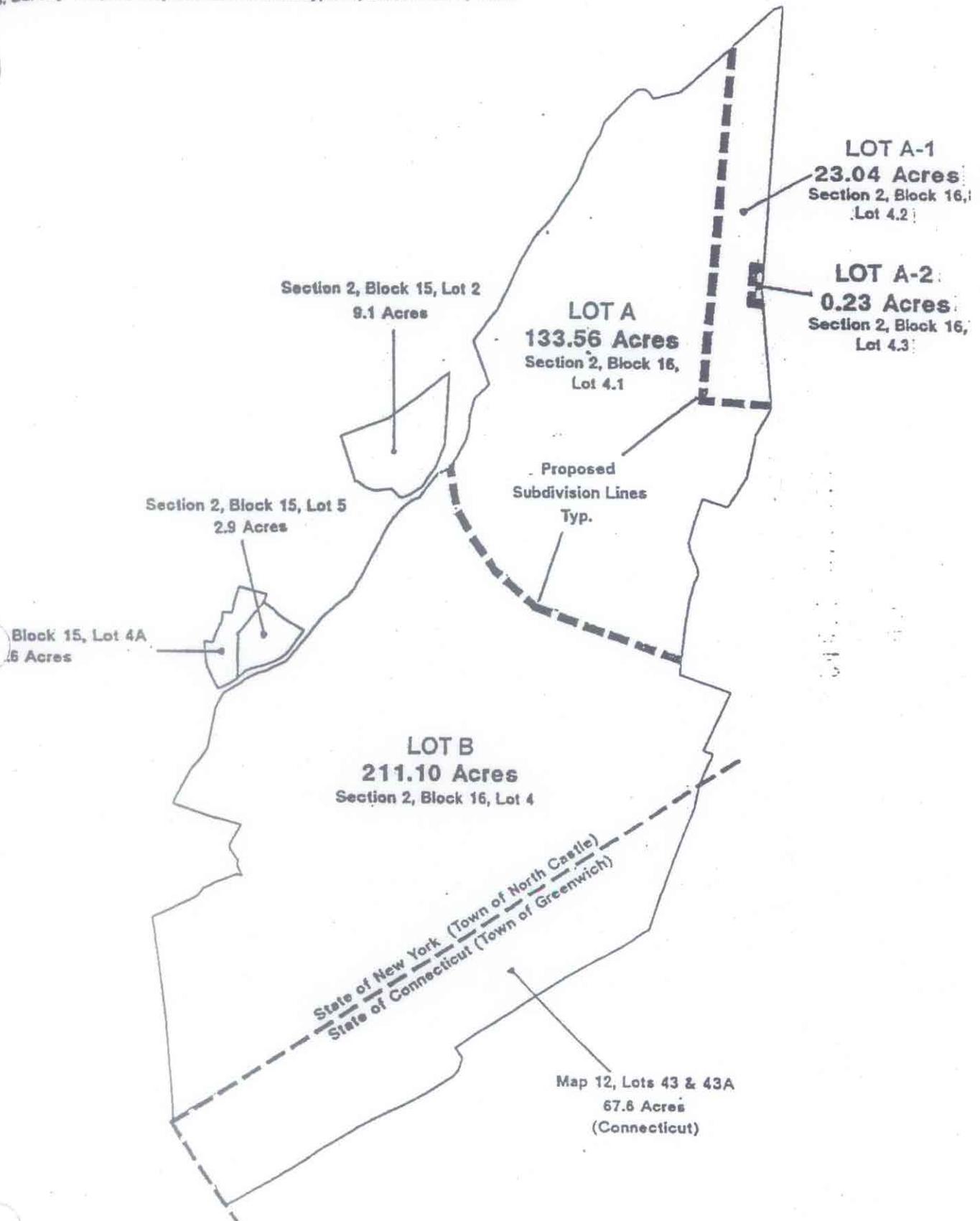
IBM also pays approximately \$15,668 or 27% of the Lighting District 2's budget. Lighting District taxes payable in 1998 by IBM are expected to be reduced to \$5,850 or 9.3% of the District's budget. These are payable by Lot A. Only a small vacant portion of Lot B is located within Lighting District 2. In 1995 IBM paid Sewer District 2 taxes in the amount of \$203,583. Projected Sewer District taxes for Lot B are estimated at \$92,706 and for Lot A at \$89,074. The proposed project will result in a positive impact on the socioeconomic condition of the Town. No mitigation is required.

III. CONCLUSION

Based on the foregoing and having fully considered the FEIS, and having considered, determined and found the matters set forth above, ESDC hereby (a) finds that all requirements of SEQRA and Part 617 have been met in the preparation and consideration of the FEIS and (b) makes the following additional findings:

1. Consistent with the social, economic and other essential considerations, from the reasonable alternatives thereto, the action to be approved is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the Final Environmental Impact Statement; and
2. Consistent with the social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decisions those mitigative measures which were identified as practicable.
3. The facts and conclusions in the FEIS were relied upon to support the decision and indicates the social economic and other factors and standards which formed the basis of the decision.

Survey Prepared By Donald J. Donnelly, L.S., Dated Feb. 6, 1995.



SONNENSHEN FOX ASSOCIATES, P.C.
 ARCHITECTS & PLANNING CONSULTANTS
 10 WEST 47TH STREET
 NEW YORK, NEW YORK 10019
 Association with:

RONALD A. FREEMAN ASSOCIATES, P.C.
 CONSULTING ENGINEERS
 100 HUNTERS POINT ROAD
 NEW YORK, NEW YORK 10044



PROPOSED HEADQUARTERS OFFICE BUILDING
 ARMONK, NEW YORK



0 (Feet) 1000 2000

FIGURE TITLE
 PROPOSED SUBDIVISION

FIGURE NO.
 II.C1